

AIJA – M&A Winter Seminar  
Valbella, 23 January 2018

*Sector specific M&A on the rise*

Key Note:

David Meier, Head M&A Coop Genossenschaft

## DETAILHANDEL



## GROSSHANDEL



## PRODUKTION



# AIJA – M&A Winter Seminar

## *Sector specific M&A on the rise*

**David Meier, Head M&A Coop Genossenschaft**  
Valbella, 23 January 2018

# Agenda

1. Deal sourcing: a challenging undertaking
2. Our spectrum of current transactions (buyside)
3. Engagement of lawyers
4. Idiosyncrasies in retail M&A
5. Key areas for the lawyers to focus on
6. What we expect from a lawyer

## 2. Deal sourcing: a challenging undertaking

Deal sourcing getting increasingly difficult in offline retail

- Consolidation in Swiss supermarket area more or less complete
- Further consolidation rightfully prohibited by competition law
- Other areas under immense pressure from online competition
- As a result: good targets scarce

## 2. Deal sourcing: a challenging undertaking

Focus shifts to other industries; but which ones?

Industry (selection)	Drawback
Offline retail (broad)	<ul style="list-style-type: none"><li>• Intimate know-how of respective country necessary</li><li>• Top management attention substantial</li><li>• Cultural differences</li></ul>
Online retail	<ul style="list-style-type: none"><li>• Market increasingly dominated by handful of large players</li><li>• Small targets rarely interesting (no economies of scale, no real USP vs. large players) or price expectations of owners unrealistically high</li></ul>
These ones (examples)?	<ul style="list-style-type: none"><li>• Healthcare: heavily regulated; pricing may come under pressure</li><li>• Financial: cyclical risks; challenges to balance sheet</li><li>• Education: could be interesting</li></ul>

## 2. Deal sourcing: a challenging undertaking

- Picture of course not as bleak
- Opportunities still arise even for our core business (e.g. Aperto Gruppe in 2017)
- Coop Gruppe has been busy expanding its activities
  - Leading driver of consolidation in
    - European foodservice industry
    - Swiss wine market (Transgourmet)
    - Ultra fresh convenience production in Switzerland
  - Interesting opportunities in areas such as chain restaurants, production of ultra fresh convenience, general wellbeing etc.
- Online retail focusing on once specific category (not the platform is important but the category know-how)
- We just have to stay ahead of the curve

### 3. Our spectrum of current transactions (buyside)

	"Minimum" turnover p.a. CHF 25 million	"Maximum" turnover p.a. CHF 500 million
Sellside advisor	De facto we assume this in many regards	Present
"Human factor"	Generally high	Generally high, however...
Data room type	Not always virtual	Virtual
No. of pages in DR	3'000	40'000
Materiality threshold	No	No
Type of transaction	Asset deal (c. 50%)	Share deal
Earn-out	At times	No
Stake acquired	Between 51% and 100%	Usually 100%

### 3. Our spectrum of current transactions (buyside)

	"Minimum" turnover p.a. CHF 25 million	"Maximum" turnover p.a. CHF 500 million
No. pages purchase agreement	30	50
Delta		<ul style="list-style-type: none"><li>- Some reps specified in greater detail</li><li>- Specific indemnities</li><li>- Damage definition more complex</li><li>- Generally less pragmatism</li></ul>
Typical annexes	<ul style="list-style-type: none"><li>- Shareholder agreement</li><li>- Labour contract</li><li>- Rental agreement</li></ul>	<ul style="list-style-type: none"><li>- Licensing agreement</li><li>- Transitional services agreement</li><li>- Rental agreement</li></ul>

## 4. Engagement of lawyers

- As early as possible
- Non binding offer contains the full package (not only valuation but also our view on the general terms and condition of a deal, the “Coop Standard”)
- Our letters of intent strongly resembles fully fledged SPAs / shareholder agreements, e.g.:
  - Signing date
  - Purchase price calculation and mechanism (locked box or closing accounts)
  - Purchase price retention
  - Leakage definition (if applicable)
  - Non-compete, non-solicitation
  - Reps and warranties / indemnities
  - Closing conditions

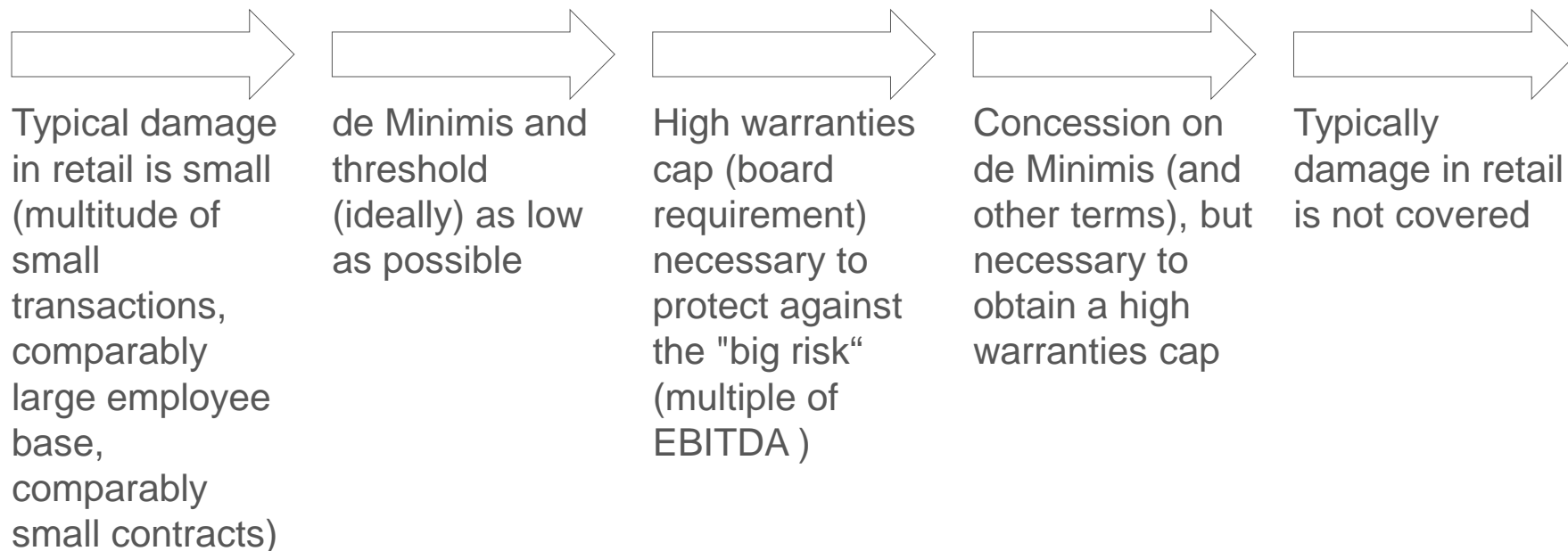
## 5. Idiosyncrasies in retail M&A

- **Importance of rental contracts**
  - Retail target w/o (rental) locations is not worth much
  - Sometimes target are only acquired *because* of its rental contracts
- Due Diligence
  - Rental contracts need to be analysed with extra care. Important issues: duration, options, change of control clauses
- SPA
  - How to deal with risk of rental contracts being invalid?
    - Definition of damage challenging: buyer needs to be covered by multiple of EBITDA loss to recover investment cost
    - Cap re rental contracts should be higher than regular warranties cap
  - How to deal with change of control clauses in rental contracts
    - Agreement with counterparty needs to be a condition precedent to closing
    - This is not to be put into the negotiation package (there's too much at stake)

## 5. Idiosyncrasies in retail M&A

### Size of typical damages and corresponding dilemma

*(it's not about winning, it's about protection )*



## 5. Idiosyncrasies in retail M&A

### Local suppliers

- (Swiss) customer demands regional products
- As such, retailers have local suppliers for parts of their dairy, bakery, fresh convenience, fruits and vegetables offering
- Retailer often vital for survival of supplier
- BUT Acquirer has own supplier network in place
- Adherence to competition law key
- Use of all synergy advantages (after closing) not possible

## 6. What we expect from our lawyer

- Personalised and stable relationship
- Time and cost efficient work
  - Give your juniors a chance to prove themselves
  - Keep emails short (always, even if it's impossible to do so)
  - Trust the disclaimers in your engagement letters
- Give us your recommendation and not only a range of potential negative outcomes (however remote)
- Put only the truly important stuff on paper (we need red flags not a PhD thesis)

**CHF 300'000 (lawyer fees) / CHF 0.6 (approx. gross margin of 1 kg carrots)  
= 500 tonnes of carrots that (theoretically) needs to be sold to cover the fees**